

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 855 of 1992

with

CIVIL APPLICATION NO.2121 OF 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JESANG VACHAN VASAVA

Versus

BHURIBA WD/O DAMODARDAS MODI

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Appearance:

MR RM VIN for Petitioners

MR DN PANDYA for Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 17/10/97

ORAL JUDGEMENT

1. This appeal is preferred by the appellants(original defendants) against respondents (original plaintiffs) on their being dissatisfied by the judgment and decree passed in Spl.C.S.No.152/81 by the 2nd Jt.Civil Judge(SD), Broach on 30.10.92. Hereafter,

the parties are referred to by their original status, i.e. plaintiffs and the defendants.

2. The plaintiffs filed Spl.Civil Suit No.152/81 in the court of 2nd Jt.Civil Judge (SD) Broach against the defendants for specific performance of agreement of sale, dated 18th May, 1977 whereby the plaintiffs agreed to purchase the land admeasuring 18 acres situated at village Kunverpara and Maripara taluka Jagadia. The said agreement, dated 18th May, 1977 is produced and proved at Exh.94. Under the said agreement the plaintiffs were to pay amount of consideration of Rs.22501/- in ten equal installments of Rs.2,000/- and the 11th instalment being of Rs.2,501/-. According to plaintiffs they were and are ready and willing to perform their part of contract but the defendants were not ready and willing to perform their part of contract and hence suit was filed for specific performance of said agreement.

3. The defendants filed their written statement at Exh.16 and resisted the suit of the plaintiffs inter alia on the ground that the suit of the plaintiffs was false and was not maintainable. They, however, admitted that the agreement of sale, dated 18th May, 1977 was executed by them but they pleaded that they were cultivating the said land since last more than 30 years as concealed tenants and 1/2 share of the crop was given to them by the plaintiffs but after the aforesaid agreement to sell, the plaintiffs stopped giving 1/2 share of the crop. They further contended that even after the agreement to sale which was executed by them, the plaintiffs were not entitled to possession of the suit land as the possession of the suit land was not handed over by them to the plaintiffs and that the defendants have continued to pay the revenue tax and they were the tenants of the suit land. It was further contended by the defendants that in view of provisions of Section 63A of the Bombay Tenancy & Agricultural Lands Act they were not liable to execute the sale deed and even otherwise the installments as agreed were not paid by them.

4. On the aforesaid pleadings of the parties the trial court framed issues at Exh.20 and on the question as to whether the plaintiffs proved that there was agreement of sale in their favour and that they were and are ready and willing to perform their part of the contract and that the defendants committed breach of said agreement to sale, the trial court answered the issue in affirmative, i.e. in favour of plaintiffs. On the question as to whether the defendants proved that they were in possession of the suit land prior to agreement to

sale as concealed tenants the finding was recorded in the negative. On the question as to whether the defendants proved that the plaintiffs were only entitled to recover back the amount of Rs.22,500/- the trial court recorded the finding in the negative. On issue No.3 as to whether the defendants proved that they were statutory tenants of the suit land or there was concealed tenancy the trial court decided the issue against the defendants. On the question as to whether the plaintiffs were entitled to recover interest @ 12% p.a. from defendants on Rs.22,500/- the trial court found in affirmative. In view of the aforesaid findings recorded by the trial court, the trial court decreed the suit of the plaintiffs for specific performance of agreement of sale the suit land and directed the defendants to handover the possession of the suit land to the plaintiffs within a period of two months. It also directed the defendants to pay to the plaintiffs interest at the rate of 12% p.a. from the date of agreement till the date of the suit.

5. Mr.R.M.Vin, Ld.advocate appearing for defendants pressed the very contentions which were pressed before the trial court.

6. Now turning to the question of execution of agreement to sale no serious contention could be raised because that fact is admitted in the written statement nor can the question be raised as to whether the plaintiffs were ready and willing to perform their part of contract because there also after appreciation of oral as well as documentary evidence the finding is recorded in favour of plaintiffs. Mr.R.M.Vin is not in position to dispute such finding after taking the court through the entire judgment as well as evidence on record.

7. As regards the question of tenancy or concealed tenancy of the defendants it was pointed out by the counsel appearing for the plaintiffs that the same issue has been finally decided by the competent authorities under the provisions of Bombay Tenancy & Agricultural Lands Act and same is also concluded by the final judgment and order in Spl.C.A.No.8639/89, dated 11.11.1991. Said judgment is rendered by C.K.Thakkar,J and same has been finally determined in favour of plaintiffs and against defendants. In fact, once the defence of the defendants being tenants of suit land or concealed tenants of suit land fails and is finally confirmed by the learned single judge of this court against which admittedly no appeal or SLP was filed. The contention of Mr.Vin that defendants were concealed tenants and that they were cultivating the land in

question on 1/2 share basis must fail and same can not be accepted.

8. The 2nd contention which is raised by Mr.Vin before this court is that even agreement to sale is required to be registered under the amendment brought out in the Indian Registration Act, 1992. Said amendment has come into force with effect from 18th May, 1987 while admittedly the agreement is of 18th May, 1977. Mr.Vin was not in position to satisfy the court that said provision can be given retrospective effect so as to nullify the transaction which took place almost 20 years prior to coming into force of the amendment in the law. Even the language of amended section does not contemplate to give retrospective effect, and therefore, such contention also can not be accepted.

9. Thirdly Mr.Vin submitted that in fact in view of the provisions of Section 63A(2) after Bombay Tenancy & Agricultural Lands Act, 1948 the decree was not executable. Now, turning to the provisions of Section 63A(2) it provides that--

"where under the provisions of this Act, any land is purchased or sold by mutual agreement, such agreement shall be registered before the Mamalatdar, and the price of the land shall, subject to the limits specified in subsection (1) be such as may be agreed upon by the parties. In the case of disagreement between the parties, the price shall be determined by the tribunal having regard to the factors mentioned in section 63A".

This submission of Mr.Vin, obviously, can not have any legal force and must fail because the competent authority under the provisions of Bombay Tenancy & Agricultural Lands Act itself found that the defendants were not the tenants and that the question of their tenancy or concealed tenancy is decided against them.

10. Lastly, Mr.Vin submitted that the trial court erred in issuing direction to pay the interest to the plaintiffs from the date of agreement till the suit is filed on the amount of Rs.2,501/- at the rate of 12% p.a. In this connection Mr.N.N.Pandya has referred and relied upon the order 41 Rule 23, and in my opinion, when the defendants have failed to perform their part of contract and have not parted with the possession thereof, plaintiffs were atleast entitled to interest and mesne profits from the date of agreement till the date of suit.

Aforesaid submsision also has no merit and therefore the appeal deserves to be dismissed, and same is dismissed. No costs.

11. In view of the orders on appeal, no order on CA No.2121/92 and rule is discharged. No costs.

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